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**Vi L. Lipski,**

*Manager, Transport Airplane Directorate,  
Aircraft Certification Service.*

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## DEPARTMENT OF JUSTICE

### 28 CFR PART 16

[AAG/A Order No. 241-2001]

#### Privacy Act of 1974; Implementation

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ) is exempting two Privacy Act systems of records from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These systems of records are the "Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003"; and "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004". The exemptions are necessary to protect law enforcement and investigatory information and functions and will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

**EFFECTIVE DATE:** This final rule is effective August 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill at 202-207-1823.

**SUPPLEMENTARY INFORMATION:** On June 4, 2001 (66 FR 29921) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16 is amended as follows:

## PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552(b)(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Add to subpart E, § 16.130 to read as follows:

**§ 16.130 Exemption of Department of Justice Systems: Correspondence Management Systems for the Department of Justice (DOJ-003); Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004).**

(a) The following Department of Justice systems of records are exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(1) Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003.

(2) Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004.

(b) These systems are exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* To provide the subject of a criminal, civil, or counterintelligence matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement of counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2).* Amendment of the records would interfere with ongoing criminal or civil law

enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 30, 2001.

**Janis A. Spasato,**

*Acting Assistant Attorney General for Administration.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 242-2001]

#### Privacy Act of 1974; Implementation

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ), is exempting a Privacy Act System of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act, 5 U.S.C. 552a,